

ORIGINAL

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Attorney or Party Name, Address, Telephone & FAX Numbers, and California State Bar Number John Mark Jennings- SBN 192641 Marshack, Shulman, Hodges & Bastian, LLP 26632 Towne Centre Drive, Suite 300 Foothill Ranch, CA 92610-2808 (949) 340-3400	FOR COURT USE ONLY <div style="border: 2px solid black; padding: 5px; text-align: center;"> FILED MAR 20 2002 </div> <small>CLERK, U.S. BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA By _____ Deputy Clerk</small>
UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA	
In re: CHIEU VAN PHAN Debtor(s).	CASE NO.: SA 00-13695 RA

NOTICE OF SALE OF ESTATE PROPERTY

Sale Date: To be determined by Court	Time:
Location:	

Type of Sale: ☒ Public ☐ Private Last date to file objections: _____

Description of Property to be Sold: _____

1. 5026 West 5th Street, Santa Ana, CA; 2. 10311 Jennrich, Garden Grove, CA 92643; 3. LaChiquita Mini Market, 902 East Washington Avenue, Santa Ana, CA 92701.


Terms and Conditions of Sale: See Attached Buy-Sell Agreement

Proposed Sale Price: See Attached Buy-Sell Agreement

Overbid Procedure (If Any): See Attached Buy-Sell Agreement

If property is to be sold free and clear of liens or other interests, list date, time and location of hearing:

Contact Person for Potential Bidders (include name, address, telephone, fax and/or e-mail address):

Mark Bradshaw, Esq./ John Mark Jennings, Esq. 

Marshack, Shulman, Hodges & Bastian, LLP

26632 Towne Centre Drive, Suite 300

Foothill Ranch, CA 92610-2808

(949) 340-3400/ Fax (949) 340-3000

Date: 3/20/02

BUY-SELL AGREEMENT

This Agreement entered into this ____ date of February __, 2001 (the "Agreement"), by and between Jennifer Ngoc Phan ("Marshack" or the "Buyer") and Richard A. Marshack, Chapter 7 Trustee ("Seller") in the United States Bankruptcy Case of In re: Phan No. SA 00-13695 RA (the "Estate").

RECITALS

WHEREAS on May 5, 2000, Chieu Van Phan ("Phan" or the "Debtor") filed a Chapter 13 Bankruptcy Case No. SA00-13695 RA. Phan converted his case to Chapter 7 on October 27, 2000. In his bankruptcy schedules, the Debtor listed certain assets, as follows: real property commonly described as 5026 West 5th Street, Santa Ana, California (the "5th Street Property"). The legal description of the 5th Street Property is attached hereafter as Exhibit "A". The Debtor also listed an interest in real property commonly known as 10311 Jennrich, Garden Grove, California 92643 (the "Jennrich Property"). A legal description of this property is attached hereafter as Exhibit "B". The Debtor also listed a sole proprietorship known as "La Chiquita Mini Market" located at 902 East Washington Avenue, Santa Ana, California 92701 (the "Market"). The Market includes business fixtures, inventory, a liquor license, cash on hand, deposit accounts, business equipment and a month-to-month leasehold (the 5th Street Property, the Jennrich Property and the Market are collectively referred to as the "Assets").

AND WHEREAS Buyer desires to purchase from Seller the bankruptcy estate's interest in the 5th Street Property, the Jennrich Property and the Market, subject to the terms and conditions hereafter stated.

AND WHEREAS Buyer desires to purchase from Seller the estate's interest in the Assets, under the following terms and conditions.

WHEREFORE, for valuable consideration, the Parties agree as follows:

1. Buyer shall deposit into an escrow of Seller's choice the sum of \$30,000.00 within two (2) business days from execution of this Agreement.
2. This Agreement is subject to approval by the United States Bankruptcy Court.

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3. Terms for purchase of the 5th Street Property:

(a) The Buyer shall purchase the 5th Street Property from the Seller, free and clear of all interests and financial/monetary liens except as follows:

(i) First and Second Deeds of Trust held by Bank of America Document Nos. 95-046474 and 97-0623383 respectively;

(ii) All real property taxes and real property tax liens assessed against the 5th Street Property;

(iii) An agreement with the City of Santa Ana regarding development of no more than one residential dwelling unit, plus guest house; Document No. 97-0316960; and

(iv) All easements and water rights as of record.

(b) Purchase of the 5th Street Property is expressly contingent upon sale free and clear of that Judgment in Orange County Superior Court Civil Case No. 801684, recorded April 18, 2000, as Document No. 00-0199082, Office of County Recorder of Orange County, California and that certain Lis Pendens filed in connection with Orange County Superior Court Case No. 98D004420 recorded December 15, 1998, as Document No. 98-0864088.

(c) Purchase of 5th Street is further contingent upon issuance of a policy of title insurance in favor of Buyer, at Buyer's cost, ensuring free and clear title to Buyer, subject only to the encumbrances described in paragraph 3(a) above or subject to any encumbrance incurred by the Buyer to refinance in part or in whole the encumbrances described in paragraph 3(a) above.

(d) The Buyer shall pay to Seller the sum of \$195,000.00 net to Seller for the Seller's interest in the 5th Street Property. In other words, any escrow fees, title insurance, transfer fees shall be born solely by the Buyer and Seller's net proceeds shall not be reduced for any reason. If Seller does not net \$195,000.00, the Seller has the right to cancel the agreement.

(e) Close of escrow shall be contingent upon title insurance satisfactory to Buyer (see 3(c) above) and her lender and subject to the Buyer obtaining financing. Escrow to close within sixty (60) days after entry of an order approving this agreement. In the event the Buyer intends to finance her purchase, the Buyer shall provide a letter to Seller within thirty (30) days wherein the lender provides tentative approval of financing.

(f) In conjunction with closing of escrow by Jennifer Phan, the Debtor shall waive his Homestead Exemption as to the 5th Street Property and any and all exemptions or right to receive any proceeds of this sale.

(g) In the event that there are liens and encumbrances not covered in Paragraphs 3(a) and (b) above or in the event Trustee does not net \$195,000.00 from the sale of the 5th Street Property, Trustee has the right to cancel this agreement.

(h) The Trustee shall deliver at close of escrow possession of the premises free of Trang Nguyen. In the event Buyer is required to evict Tran Nguyen, she shall receive a rebate of \$200.00 per day until evicted.

4. Terms for purchase of the Jennrich Property:

(a) The Buyer purchases the estate's interest in the Jennrich Property free and clear of all interests and financial/monetary liens except as follows:

- (i) any real property taxes assessed against the Jennrich Property;
- (ii) the first deed of trust held by 1st Nationwide Mortgage, Document No. 93-0387934; and
- (iii) covenants, conditions and restrictions and easements of record.

(b) Buyer's purchase of the Jennrich Property is further contingent upon issuance of a policy of title insurance insuring title to the Jennrich Property in the name of Buyer and the Estate of Kim Tu Phan subject only to the encumbrances described in paragraph 4(a) above. Title insurance and any escrow fees to be at Buyer's sole cost.

(c) The Buyer agrees to pay the sum of \$40,000.00 net to Seller for Seller's interest in the Jennrich Property. In other words, any excess fees, title insurance transfer fees shall be born solely by the Buyer and Seller's proceeds shall not be reduced for any reason. If seller does not net \$40,000.00, then Seller has the right to cancel this agreement.

(d) The Debtor hereby waives any and all claim of exemption as to the Jennrich Property or the proceeds of its sale.

(e) In the event there are liens and encumbrances not covered in Paragraphs 3(a) above, the Trustee has the right to cancel this agreement.

5. Terms for purchase of the Market:

The Buyer agrees to purchase from Seller for the sum of \$5,000.00 the estate's interest in all inventory, equipment, fixtures, licenses, cash on hand and deposit accounts belonging to the business known as La Chiquita Mini Market, located at 902 East Washington Avenue, Santa Ana, California. Seller to execute appropriate assignments and bills of sale. No escrow or UCC check will be necessary. The \$8,000.00 previously seized by the Trustee shall remain with the Trustee as property of the estate and the Debtor shall not claim any exemption or other right to any of the funds described in this paragraph.

6. Other terms for purchase of Assets described above:

The Buyer's purchase of the above Assets is contingent upon the Seller's conveyance of each Asset. In the event Seller cannot convey one or more of the above Assets to Buyer, Buyer may withdraw its offer and recover its deposit or may elect in its sole discretion to purchase one or more of the assets.

7. In the event litigation is necessary to enforce the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs.

8. As part of this Agreement, the Buyer understands and agrees that the Trustee shall seek approval from the Bankruptcy Court for the following Overbid Procedures. The Trustee does not guaranty that the Bankruptcy Court will approve the Overbid Procedures without any material modification thereto.

(a) The sale of the Assets shall be subject to the qualifying overbids. Potential overbidders must bid an initial amount of at least Ten Thousand Dollars (\$10,000.00) over the Purchase Price offered by the Purchaser. Minimum bid increments thereafter shall be in increments of Five Thousand Dollars (\$5,000.00).

(b) Overbids must be in writing and be received by the Seller's counsel, Marshack Shulman Hodges & Bastian LLP to the attention of Richard Marshack, no later than five days prior to the sale hearing re same. Overbids must be accompanied by certified funds in an amount equal to ten percent (10%) of the overbid purchase price. All overbidders shall prequalify, in the discretion of the Seller and Buyer, no later than three (3) days prior to the sale hearing, by providing to the Seller and to Buyer evidence, satisfactory to the Seller and Buyer of such overbidders' ability to qualify as a purchaser of the Assets under the bidding procedures. In connection therewith, the Seller may require all potential overbidders to provide the overbidder's audited financial statements and federal tax returns for the prior two calendar/fiscal years and such other documentation relevant to an overbidder's ability to qualify as the purchaser of the Assets and to provide proof of an overbidder's ability to close the sale and immediately and unconditionally pay the above-referenced purchase price of the Assets as increased by overbid at closing.

(c) All overbidders must seek to acquire the Assets on terms and conditions not less favorable to the Estate than the terms and conditions to which the Buyer has agreed to purchase the Assets as set forth herein, including, without limitation to, the provisions that competing bids must be obligated to perform within the same time that the Buyer would be obligated to perform and that the purchase of the Assets must be an all-cash purchase. If overbids are received, the final bidding round shall be held at the sale hearing.

(d) In the event there is one or more overbids, Buyer shall have the right (instead of overbidding by \$10,000) to match any overbid or incremental overbid; and shall thereby be deemed the successful bidder if no higher and better subsequent overbid is received.

(e) In the event that the Buyer is not the successful bidder at the sale hearing, and regardless of whether or not the Seller consummates a transaction with the successful bidder, then the Seller shall deliver to Buyer a topping fee equal to three percent (3%) of the final purchase price (the "Topping Fee"), which fee shall be paid within five (5) days of the sale hearing and shall be paid solely from the deposit paid by the successful

bidder, without any administrative liability therefore to the Estate. The Seller acknowledges that it would be difficult or impossible to accurately ascertain Buyer's damages if the transaction provided for herein failed to close as a result of consummation of a sale to an overbidding third party. The amount of the Topping Fee represents the parties' best estimate of the detriment Buyer would sustain in such circumstances, and is reasonable under the circumstances existing as of the date of this Agreement. Buyer shall have no obligation to prove its damages as a condition of receiving the Topping Fee.

(f) At the sale hearing, the Bankruptcy Court shall decide which of the bids is the highest and best bid, and such bidder shall be deemed to be the "successful bidder". If, due to the fault of the successful highest bidder, the successful highest bidder fails to pay the purchase price on the fifth business day after entry of an order approving the sale, the successful bidder will expressly and unconditionally forfeit its deposit and all such amounts become nonrefundable. The Seller may then sell the Assets to the back-up bidder approved by the Bankruptcy Court at the sale hearing.

Dated: _____
JENNIFER NGOC PHAN, Buyer

Dated: _____
RICHARD A. MARSHACK, Chapter 7 Trustee,
Seller

Dated: _____
CHIEU VAN PHAN, Debtor

EXHIBIT "A"

APN 100-291-09

That portion of the northwest quarter of the southwest quarter of the southwest quarter of Section 9, Township 5 south, range 10 west, S.B.B. & M., in the City of Santa Ana, County of Orange, State of California, described as follows:

The east B2.5 feet of the following described property:

Beginning at a point in the north line of the south 396 feet of the northwest quarter of the southwest quarter of the southwest quarter of said Section 9, distant thereon 157.5 feet westerly from the east line of said northwest quarter of the southwest quarter of the southwest quarter and running thence northerly parallel with the east line of said northwest quarter of the southwest quarter of southwest quarter of the southwest quarter, 264 feet, more or less, to the north line of said northwest quarter of the southwest quarter of the southwest quarter; thence westerly along said north line 312 feet; thence southerly parallel with the east line of said northwest quarter of the southwest quarter of the southwest quarter of the southwest quarter of said Section 9, 264 feet, more or less, to the north line of the south 396 feet of said northwest quarter of the southwest quarter; thence easterly along said north line, 312 feet to the point of the beginning.